

**Rule Summary and Fiscal Analysis (Part A)****Department of Aging**

Agency Name

Division

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**173-3-09**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Appeals.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.02; 173.392; Section 305 (a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11**

5. Statute(s) the rule, as filed, amplifies or implements: **173.392; Section 212 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing this new rule as part of a larger effort to codify ODA's standards for agreements between AAAs and providers who are not providing services under a Medicaid-funded program (i.e., providers who are non-certified providers under section 173.392 of the Revised Code). This effort will bring ODA into compliance with sections 173.04 and 173.392 of the Revised Code, Section 305 (a)(1)(C) of the

Older Americans Act, and 45 C.F.R. 1321.11.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This proposed new rule:

1. Explains the requirements for a provider and an AAA in a matter regarding an adverse action taken by the AAA against the provider about which the provider appeals.
2. Explains the requirements/permissions for a provider, the AAA, and ODA in a matter regarding an appeal of an AAA's final decision on an appeal regarding an adverse action taken by the AAA against the provider.
3. Defines "adverse action."

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously

filed version of this rule; if none, please state so:

On January 5, 2009, ODA refiled this proposed new rule so that it would be refiled on the same day as the other proposed rules of chapter 173-3 of the Administrative Code. No changes were made to the rule's language.

On January 9, 2009, ODA refiled this proposed new rule to:

1. Insert an introduction as new paragraph (A) of the rule.
2. Convert paragraphs (A) and (B) of the rule into paragraphs (B)(1) and (B)(2) of the rule and to insert "Appeal to the AAA" as the new paragraph (B) of the rule.
3. Replace the content of paragraph (B)(1) of the rule with, "Written process: Each AAA shall maintain in writing a process that allows a provider to appeal an adverse action related to a provider agreement funded with Older Americans Act funds." Paragraph (A) of the rule formerly said, "Each AAA shall have a process in place that allows a provider to appeal adverse actions related to a provider agreement funded with Older Americans Act funds."
4. Replace the content of paragraph (B)(2) of the rule with, "Final AAA decision: An AAA that conducts an appeal hearing shall forward a copy of the provider's written request for the appeal hearing and a copy of the AAA's final decision on the matter to ODA no later than five business days after the date the AAA renders its final decision." Paragraph (B) of the rule formerly said, "Any AAA that conducts an appeal hearing at the local level shall forward a copy of the provider's written request for the appeal hearing and a copy of the AAA's final decision on the matter to ODA no more than five business days after the date the AAA renders its decision."
5. Insert paragraph (C) of the rule, including its sub-paragraphs, to outline the process for appealing an AAA's final decision on an appeal by requesting an appeal hearing with ODA and ODA's process for responding to the request, for conducting the hearing, and for making its final decision on the appeal.
6. Delete paragraph (D) because, once ODA adopts the rule, the history trail at the end of a rule lists the effective date of a rule. It is redundant to mention it separately in the body of the rule.
7. Insert a new paragraph (D) of the rule to define "adverse action."
8. Revise this RSFA.

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA does not anticipate that the proposed adoption of this new rule would have any impact on the biennial budget established for ODA by the General Assembly because this proposed new rule should not create any expenses unforeseen when the General Assembly appropriate funds to ODA in Am. Sub. H. B. No. 119 (127th G. A.).

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

322-490-618 Federal Aging Grants.

3M3-490-611 Federal Aging Nutrition.

3M4-490-612 Federal Independence Services.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

ODA estimates that there will only be a cost of compliance to a person who competitively bids for a provider agreement under rule 173-3-05 of the Administrative Code to provide a service that is reimbursed with Older Americans Act funds, but does not win the competition, then appeals the decision, but does not win the appeal. ODA estimates that this person would spend money to prepare and deliver its argument at an administrative hearing with the AAA, which may involve personnel costs, paper costs, and the travel costs (to travel to the local AAA).

16. Does this rule have a fiscal effect on school districts, counties, townships, or

municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**Rule Summary and Fiscal Analysis (Part B)**

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
No	Yes	Yes	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

ODA estimates that there will only be a cost of compliance to a county, township, or municipality that competitively bids for a provider agreement under rule 173-3-05 of the Administrative Code to provide a service that is reimbursed with Older Americans Act funds, but does not win the competition, then appeals the AAA's decision to enter into an agreement with another provider, but does not win the appeal. ODA estimates that the government entity would spend money to prepare and deliver its argument at an administrative hearing with the AAA, which may involve personnel costs, paper costs, and travel costs (to travel to the local AAA).

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

*Not Applicable.*

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

ODA estimates that there will only be a cost of compliance to a county, township, or municipality that competitively bids for a provider agreement under rule 173-3-05 of the Administrative Code to provide a service that is reimbursed with Older Americans Act funds, but does not win the competition, then appeals the AAA's decision to enter into an agreement with another provider, but does not win the appeal. ODA estimates that the government entity would spend money to prepare and deliver its argument at an administrative hearing with the AAA, which may involve personnel costs, paper costs, and travel costs (to travel to the local AAA).

**(a) Personnel Costs**

ODA estimates that a government entity that appeals an adverse decision under this rule may expend personnel costs to have personnel participate in an administrative hearing and to prepare an argument for the hearing.

**(b) New Equipment or Other Capital Costs**

ODA estimates that there will be no cost of compliance in this area, other than the cost to print documents.

**(c) Operating Costs**

ODA estimates that there will be no cost of compliance in this area.

**(d) Any Indirect Central Service Costs**

ODA estimates that there will be no cost of compliance in this area.

**(e) Other Costs**

ODA estimates that there will be no cost of compliance in this area.

**6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.**

ODA estimates that any cost of compliance associated with the proposed adoption of this rule would be minor and that most government entities entering into provider agreements with an AAA under Chapters 173-3 and 173-4 of the Administrative Code would probably not enter into an appeals process and, thus,

would not incur a cost of compliance. However, if a county, township, or municipality did incur a cost of compliance for which it had no income to finance, it has taxing authority to cover its expenditures.

7. Please provide a statement on the proposed rule's impact on economic development.

ODA estimates that there will be no positive or negative impact upon economic development as a result of the proposed adoption of this rule.